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EXAMINER	
BHATIA, AJAY M	
ART UNIT	**PAPER NUMBER**
2145	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/06/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/821,833	BRETCHER, JOHN T.	
	Examiner	Art Unit	
	Ajay M. Bhatia	2145	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12/20/06*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-91* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-91* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Response to Arguments

Applicant's arguments with respect to claims 1-91 have been considered but are moot in view of the new ground(s) of rejection.

The declaration under 37 CFR 1.132 filed June 30, 2006 is insufficient to overcome the rejection of claims 27, 28, 33, 34-42 and 48-91 based upon 112th rejection as set forth in the last Office action because: expert opinion that an application meets the requirements of 35 U.S.C. 112 is not entitled to any weight; however, facts supporting a basis for deciding that the specification complies with 35 U.S.C. 112 are entitled to some weight. The applicant has not provided this evidence of any supporting facts and it is not apparent in the declaration that any supporting facts were relied upon. The declaration is merely an opinion. Also the opinion is based upon an in appropriate level of one of ordinary skill in the art, the deceleration repeatedly refers to one of ordinary skill in the art, but defines them well beyond the skill on of ordinary skill in the art at the time of invention. Additionally the deceleration repeated states that the present specification does not disclose sufficient information to accomplish the present claims and further development is required in creating an additional invention to facilitate the operation of the present invention. The deceleration further attempts to add features, which are not disclosed by the specification that would also require additional design and development of an additional invention. Specifically when the deceleration discussed the "Game applications," that one of ordinary skill is an experienced programmer, clearly not one of ordinary skill in the art. Additionally the requirement is for the developer to create a "game application capable of running," this shows the requirement for an additionally invention. In the example for the

cellular telephone communication, the deceleration notes that this feature requires a partially special hardware, that needs to be addition to modification of the cellar phone need software created for it operation. All of these are not supported by the specification extended beyond what is readily known and requiring significant design and development of a supporting invention. Therefore for the reasons discussed the declaration is insufficient.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 27, 28, 33, 34-42 and 48-91 are objected to and rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 27 and 28 disclose a real-time game application being selected and used in the embodiment disclosed in claim 16. The specification does disclose game applications [Spec, col. 11, lines 35-39] but does not disclose how one of ordinary skill in the art, at the time the invention was made, to incorporate the game application into the embodiment of claim 16.

Claims 33 and 34-42 disclose that a communication path does not "pass through" the front-end server. The drawings are relied upon to disclose the written description of the path not

passing through the front-end server but does not disclose how one of ordinary skill in the art, at the time the invention was made, to be enabled to have a communication path does not "pass through" the front-end server.

Claim 38 discloses a real-time game application being selected and used in the embodiment disclosed in claim 34. The specification does disclose game applications [Spec, col. 11, lines 35-39] but does not disclose how one of ordinary skill in the art, at the time the invention was made, to incorporate the game application into the embodiment of claim 34.

Claims 48-55 and 70-77 disclose "connecting two users via the Internet and via the front-end server to initiate communication with the dedicated processor". The specification does disclose two users [Spec, col. 10, line 39 and col. 11, line 4] but does not disclose how one of ordinary skill in the art, at the time the invention was made, to be enabled to have connected two users via the Internet and via the front-end server to initiate communication with the dedicated processor within the embodiments of the invention.

Claims 56-65, 68, 69, 78-87, 90 and 91 disclose cellular telephone communication. The specification does disclose cellular [Spec, col. 10, line 38] but does not disclose how one of ordinary skill in the art, at the time the invention was made, to be enabled to have cellular telephone communications within the embodiments of the invention.

Claims 64-67 and 86-89 disclose a real-time game application being selected and used in their respective embodiments of the invention. The specification does disclose game applications [Spec, col. 11, lines 35-39] but does not disclose how one of ordinary skill in the art, at the time the invention was made, to incorporate the game application into the embodiments of the claimed invention.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim1 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 16 of copending Application No. 11254216. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1, anticipates the features of claim 16 in application 11/254,216, teaching the same features.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim 48 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 16 of copending Application No. 11493940 . Although the conflicting claims are not identical, they are not patentably distinct from each other

because claim 48, anticipates the features of claim 16 in application 11/254,216, teaching the same features.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
>
> Note that 69 and 91 are multi-dependent claims and therefore may be multiple times.

Claims 9, 10, 12-15, 30, 31, 33-37, 39-42, 68, and 69 are rejected under 35 U.S.C. 102(e) as being anticipated by Choquier (Patent 5,774,668). For the purpose of brevity exemplary claim 9 is shown, if during the prosecution it become necessary additional claims will be mapped, using the same grounds of rejection.

For claim 9, Choquier teaches, a method for processing real-time applications which may be executed by

a plurality of users, the method comprising:

providing a front-end server that has access to a plurality of applications; (Choquier, Col. 2 lines 22-42, gateway)

providing a plurality of dedicated processors that communicate with the front-end server, the plurality of dedicated processor being inhomogeneous; (Choquier, Col. 2 line 53 to Col. 3 line 9, application)

receiving a message from at least one user of the plurality of users to the front-end server that the at least one user desires to have executed a particular application; (Choquier, Col. 2 line 53 to Col. 3 line 9, applications)

retrieving the particular application selected by the at least one user; (Choquier, Col. 2 line 53 to Col. 3 line 9, chat)

selecting a dedicated process that is of the appropriate type and capacity to run the particular application; (Choquier, Col. 2 line 53 to Col. 3 line 9, server)

downloading the particular application selected by the at least one user to a memory in the selected dedicated processor; (Choquier, Col. 2 line 53 to Col. 3 line 9, replicate)

initiating communication between the plurality of users and the selected dedicated processor; (Choquier, Col. 5 lines 30-45 user logon) and

executing the particular application selected by the at least one user on the selected dedicated processor. (Choquier, Col. 2 line 53 Col. 3 line , chat)

Claims 1-55, 66-77, 86-91 are rejected under 35 U.S.C. 102(e) as being anticipated by Perlman (U.S. Patent 5,586,257). For the purpose of brevity exemplary claim 1 is shown and some dependent claim showing exemplary features, if during the prosecution it become necessary additional claims will be mapped, using the same grounds of rejection.

For claim 1, Perlman teaches, a method for processing real-time applications, the method comprising:

providing a front-end server; (Perlman, Col. 4 lines 43-60 server)

providing a plurality of dedicated processors coupled to the front-end server so that the front-end server can communicate with at least one of the plurality of dedicated processors; (Perlman, Col. 4 lines 43-60, server)

selecting at least one of the plurality of dedicated processors to execute a selected application; (Perlman, Col. 4 lines 43-60, server, Col. 17 lines 7-25, game)

transferring the selected application from a memory device to the at least one of the plurality of dedicated processors for execution; (Perlman, Col. 17 lines 7-25, game)

initiating communication between a plurality of users and the at least one of the selected dedicated processors so that the plurality of users can participate in the execution of the selected application; (Perlman, Col. 11 lines 7-25, players)

executing the selected application at the at least one of the selected dedicated processors; (Perlman, Col. 11 lines 7-25, select second user, severing game) and

suspending communication between the plurality of users and the front end server. (Perlman,Col. 23 lines 4-10, connect to matched up player)

For claim 8, Perlman teaches, the method of claim 1 further comprising:

providing a voice bridge between one or more users of the plurality of users and one or more processors of the plurality of dedicated processors. (Perlman, Col. 39 lines 20-55, game play and voice)

For claim 18, Perlman teaches, a method according to claim 16, further comprising:

selecting at least one of the plurality of dedicated processors to execute the selected application. (Perlman, Col. 17 lines 7-25, game)

For claim 20, Perlman teaches, a method according to claim 18, wherein the selecting at least one of the plurality of dedicated processors includes the plurality of dedicated processors communicating their status to the front-end server. (Perlman, Col. 22 lines 1-20, game player statistical updating)

For claim 22, Perlman teaches, a method according to claim 16, further comprising:

enabling communication between at least one additional user and the at least one of the dedicated processors such that the user and the at least one additional user can participate in the execution of the selected application. (Perlman, Col. 23 lines 13-45, multiple player games)

For claim 27, Perlman teaches, a method according to claim 16, wherein the selected application is a real-time game application. (Perlman, Col. 39 lines 20-55, game, Col. 38, real-time video games)

For claim 39, Perlman teaches, a method according to claim 34 wherein the particular application is a non-real-time application. (Perlman, Col. 19 lines 60-65, non-real time)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
>
> Note that 69 and 91 are multi-dependent claims and therefore may be multiple times.

Claims 56-65,69,78-85, and 91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perlman in view of Scott (U.S. Patent 5,479,480). For the purpose of brevity exemplary feature which is not show in Perlman is addressed, if during the prosecution it become necessary additional claims will be mapped, using the same grounds of rejection.

Perlman, fails to teach, cellular telephone communication

Scott teaches a cellular modem, (Scott, note entire application is directed toward a cellular modem)

Scott and Perlman are both in the field of modems

Scott and Perlman are compatible because Perlman allows for different type of modems (Perlman, Col. 4 lines 5-19, modem)

It would have been obvious to on of ordinary skill in the art at the time of the invention was made to combine the features of Perlman with that of Scoot. Perlamn discussed the use of differing modem and compatibility, (Perlman, Col. 4 lines 5-19) and Scott teaches a cellular modem. One of skill would combine these features in order to utilize the cellular network and ability to move. (Scott, Col. 2 lines 43-65)

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See attached Notice of references cited (if appropriate).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ajay M. Bhatia whose telephone number is (571)-272-3906. The examiner can normally be reached on M-F 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on (571)272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jason Cardone
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AB